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FILED
FEB 16 1982
ALEXANDER L. STEVAS

No. 80-1305

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1981

ALFRED L. SNAPP & SONS, INC., et al.

PETITIONERS

v.

COMMONWEALTH OF PUERTO RICO

On the relation of
Pedro Barez, Secretary, Department of
Labor and Human Resources

RESPONDENT

On Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

BRIEF OF AMICUS CURIAE COMMONWEALTH OF MASSACHUSETTS

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February 12, 1982

STATEMENT OF INTEREST

The Commonwealth of Massachusetts has a tradition of actively protecting, as parens patriae, the economic interests of its citizens. See, e.g., Maryland v. Louisiana, U.S. , 101 S. Ct. 2114 (1981); Federal Energy Administration v. Algonquin SNG. Inc., 426 U.S. 548 (1976).[1/] Massachusetts is interested in having the principles governing a state's parens patriae standing defined broadly, so that Massachusetts may continue its traditional policy. Therefore, Massachusetts, acting by its Attorney

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1/ Cf. Appeal of New England Power Co., 424 A. 2d 807 (N.H. 1980), on appeal sub. nom. Commonwealth of Massachusetts v. New Hampshire, No. 80-1471 (intervention by Massachusetts before New Hampshire public utilities commission).

General pursuant to state law[2/] and Sup. Ct. R. 36.5, supports the position of Puerto Rico in this case.

In addition, there are apple growers in Massachusetts who employ seasonal farm workers to harvest apples and who are subject to the Wagner-Peyser Act, 29 U.S.C. §§49 et. seq. (1976), and the Immigration and Nationality Act of 1952, 8 U.S.C. §§1101 et. seq. (1976). At the height of the 1981 apple harvest season, 695 seasonal workers were employed in Massachusetts. Of these, 394 were foreign and 26 were Puerto Rican. If there are any violations of applicable federal laws by growers in this state, Massachusetts has a distinct interest in ascertaining whether Puerto Rico has standing to seek relief in federal court.

2/ Massachusetts Gen. Laws Ann. Ch. 12, §3 (West 1976).

SUMMARY OF ARGUMENT

Puerto Rico seeks to ensure that its large unemployed work force is not denied the opportunity to work in Virginia's apple growing industry. Puerto Rico alleges that the growers violated applicable statutes and regulations in 1978 and will do so in subsequent years, if not enjoined. The impact of these violations falls not just on the individual workers affected in 1978, but also on Puerto Rico's whole body of unemployed adults, any of whom could apply for and obtain work in later years, but for the violations.

Puerto Rico's interest in fostering the economic opportunities of its large pool of unemployed farm workers is no

less substantial than other states' recognized interest in asserting the economic well-being of their farm owners. The Court has permitted a state to represent, parens patriae, the interests of its citizenry in the welfare of one sector of the state's economy. For purposes of a state's standing under Article III, it matters not whether that sector sells farm produce or farm labor.

Joblessness affects not only the individual worker, but also imposes hardship on his dependents and demoralizes society at large. When joblessness is pervasive, as in Puerto Rico, it becomes a matter of strong state interest. Under the principles of parens patriae standing long-accepted by this Court, Puerto Rico must be found to be a proper party.

ARGUMENT

I. PUERTO RICO HAS STANDING IN FEDERAL DISTRICT COURT TO SECURE THE BENEFITS OF FEDERAL LAWS FOR ITS WORK FORCE AGAINST VIRGINIA APPLE GROWERS WHO HAVE ALLEGEDLY VIOLATED THOSE LAWS.

A state may sue as the representative of its citizens, parens patriae, to protect their "health, comfort and welfare." Pennsylvania v. West Virginia, 262 U.S. 553, 592 (1923). A state's interest in the prosperity of its citizens and the welfare of its economy is a well established basis for such representative standing.[3/] However, a state may

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3/ See Maryland v. Louisiana, 101 S. Ct. at 2124-25; Georgia v. Pennsylvania R. Co., 324 U.S. 439, 447-52 (1945); North Dakota v. Minnesota, 263 U.S. 365,

(footnote continued)

not assert, as a nominal party, the private claims of its citizens.[4/]

"[A State] may act as the representative of its citizens in original actions where the injury alleged affects the general population of a state in a substantial way. [citations omitted]"

(footnote continued)

374 (1923); Pennsylvania v. W. Virginia, 262 U.S. at 591-92; New York v. New Jersey, 256 U.S. 296, 301-302 (1921); Georgia v. Tennessee Copper Co., 206 U.S. 230, 237 (1907); Kansas v. Colorado, 206 U.S. 46, 99-100 (1907); Missouri v. Illinois, 180 U.S. 208, 241 (1901). Cf. Hawaii v. Standard Oil Co., 405 U.S. 251, 257-260 (1972); Louisiana v. Texas, 176 U.S. 1, 19 (1900).

4/ E.g., Pennsylvania v. New Jersey, 426 U.S. 660, 665-66 (1976); Oklahoma ex rel. Johnson v. Cook, 304 U.S. 387, 395-96 (1938); Kansas v. United States, 204 U.S. 331, 340-41 (1907). But see New York v. Connecticut, 4 U.S. (4 Dall.) 1 (1789)(jurisdiction assumed, but injunction denied).

Maryland v. Louisiana, 101 S.Ct. at 2124. Every citizen of a State need not be aggrieved for "the general population" to be affected for purposes of parens patriae standing.[5/] What is required is that the public welfare, not merely private interests, be affected.

A. Puerto Rico's General Economy Is Affected by the Apple Growers' Noncompliance with Federal Law.

Where injury is caused to one sector of a state's economy, the general welfare of the state is affected as a

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5/ Cf. Pennsylvania v. West Virginia, 262 U.S. at 564 ("[A state] may properly sue to protect the health and comfort of its inhabitants and the value of their property . . . though the danger it seeks to avert does not threaten all of its inhabitants, or does not threaten all of them in like degree. [citations omitted]").

matter of law, as this Court has ruled. For example, in Kansas v. Colorado, it was alleged that Colorado's diversion of water flowing in the Arkansas River caused economic losses to downstream riparian owners in Kansas. As to the affected land, the Court said:

> Its prosperity affects the general welfare of the state. The controversy rises, therefore, above a question of local private right and involves a matter of state interest . . . .

206 U.S. at 99. In North Dakota v. Minnesota, the latter state's activities caused an interstate stream to flood, which damaged the crops and the arable quality of land of farms in North Dakota. The Court did not count the number of farms affected or measure the farms' importance in the state's overall economy, but concluded that North Dakota "has such an interest as quasi-sovereign

in the comfort, health, and prosperity of its farm owners that resort may be had to this Court for relief." 263 U.S. at 374.[6/] In both of these cases, injury to a portion of the agricultural production sector of a state's economy was found to present an injury to the state's general economy. Similarly, here Puerto Rico asserts an injury to the sector of its economy that is engaged in selling its labor power, i.e., its unskilled work force that is available for employment in Virginia's orchards. A state has an interest in preventing economic loss in the sector of its economy which sells its labor power at least as great as its

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6/ Cf. Missouri v. Illinois, 180 U.S. at 241 (substantial impairment of prosperity and health of towns and cities in Missouri on the Mississippi River, because of Chicago sewage in river water, affects entire state).

interest in the sector which sells agricultural produce.[7/] Even if there is a difference in a state's interest in the welfare of its farm workers and its farm owners, it is not so great as to mandate different treatment of a state as litigant under Article III of the Constitution.

B. The Injury to Puerto Rico's Economic Welfare Is Substantial.

Whether or not a state's general welfare is affected "in a substantial way" must be determined by looking at the facts in each case. Adverse effects in the future, as well as in the

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7/ Cf. Hunt v. Washington Apple Advertising Commission, 432 U.S. 333, 341-45 (1977)(state agency which "serves a specialized segment of the State's economic community which is the primary beneficiary of its activities" has standing as representative of apple growers and dealers to challenge another state's labelling statute).

present, must be considered. See Pennsylvania v. West Virginia, 262 U.S. at 590-93; New York v. New Jersey, 256 U.S. at 302-303; Georgia v. Tennessee Copper Co., 206 U.S. at 238-39; Missouri v. Illinois, 180 U.S. 208. The degree of injury may be substantial even though large numbers of individuals are not immediately affected. In North Dakota v. Minnesota, for example, the Court did not even indicate the number of farms affected by flooding. In Georgia v. Tennessee Copper Co., the Court found that interstate air pollution caused or threatened enough damage "to the forests and vegetable life, if not to health", without counting the private individuals possibly affected.[8/] It should also

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8/ Although the number of individual natural gas consumers who would have

(footnote continued)

be noted that injury to the economy of a state need not be caused directly by the defendant's action, but may be indirect. See Maryland v. Louisiana, 101 S.Ct. at 2125; Pennsylvania v. West Virginia, 262 U.S. at 564; Missouri v. Illinois, 180 U.S. at 241.

Puerto Rico's complaint alleges a substantial impact on its general welfare. It reveals unemployment levels in Puerto Rico in 1978 at 18.5% for all adults and 23% for rural workers. (J.A. 3) Unemployment in this context is not just a severe personal hardship for an

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(footnote continued)

been affected by West Virginia's statute was noted by the Court in Pennsylvania v. West Virginia, this was done for descriptive, rather than prescriptive reasons. 262 U.S. at 584-85, 590.

individual worker and his dependents, as lack of work always is, but is a social problem as well. It demoralizes employable workers in the general population.[9] It creates a chronic burden for Puerto Rico's welfare system. And because virtually any unskilled worker in Puerto Rico could apply for and obtain a seasonal apple-picking job in future years,[10] the impact of petitioners' alleged denial of job opportunities falls on the entire unemployed work force. It is thus at least as pervasive and debilitating an injury in the Puerto Rican

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9/ See Commonwealth of Puerto Rico v. Alfred L. Snapp & Sons, Inc., 632 F. 2d 365, 370 (4th Cir. 1980).

10/ Such jobs are available all along the East Coast of the United States. See Commonwealth of Puerto Rico v. Bramkamp, 654 F.2d 212, 213 (2nd Cir. 1981).

context as the potential economic losses to farmers were in North Dakota v. Minnesota and Kansas v. Colorado, or the economic costs to consumers in Maryland v. Louisiana.

C. Puerto Rico Has Asserted a Sufficiently Adverse Interest to Establish Standing in District Court.

In arguing that Puerto Rico's complaint, filed in District Court, fails to allege an injury affecting "the general population . . . in a substantial way",[11/] petitioners have misconceived this Court's test for state standing in original jurisdiction cases. This test evolved in cases brought under the Court's jurisdiction under Article III, §2, of the Constitution. This jurisdiction must necessarily be exercised "sparingly", United States v. Nevada,

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11/ Brief for Petitioners, 16-24.

412 U.S. 534, 538 (1973), lest the Court's docket become "inundated", Pennsylvania v. New Jersey, 426 U.S. 660, 665 (1976), and its ability to exercise its appellate jurisdiction become "impaired", Washington v. General Motors Corp., 406 U.S. 109, 113 (1972). The test has therefore been applied rigorously in original actions.

The test need not be applied so strictly in cases filed in District Court. There, it should require that a plaintiff state, like any other litigant, allege a sufficient "stake in the outcome of the controversy as to ensure that concrete adverseness which sharpens the presentation of issues." Baker v. Carr, 369 U.S. 186, 204 (1962). Even if Puerto Rico's complaint could not be filed as

an original action, it nevertheless asserts a sufficiently adverse interest to satisfy the "case or controversy" requirement for standing in District Court, for the reasons discussed above, pp. 9-10 and 12-14.

II. PUERTO RICO IS ASSERTING THE RIGHTS OF ITS WORK FORCE AS A WHOLE, NOT THE PERSONAL CLAIMS OF INDIVIDUALS.

Puerto Rico is seeking to prevent the denial of jobs in Virginia's apple-growing industry to its massive pool of unemployed workers, in accordance with federal statutes and regulations. The injunctive relief sought in prayer 4 of its complaint would enjoin the growers from violating these federal provisions in the future. The beneficiaries of such an injunction are not necessarily the

individuals named in the complaint or those who were referred to the Virginia growers in 1978, but are any of Puerto Rico's thousands of unemployed adults who are capable of doing apple-picking work.12/ Even if some of the workers hired in 1978 assert individual damage claims, Puerto Rico still has standing to seek injunctive relief on behalf of its entire work force and its members. See North Dakota v. Minnesota, 263 U.S. at 374-76. Cf. Hawaii v. Standard Oil Co., 405 U.S. at 356 n.7.

12/ The declaratory relief sought in prayers 1-3 may be seen as ancillary to the injunctive relief sought.

CONCLUSION

Puerto Rico has *parens patriae* standing as representative of Puerto Rican workers to seek to enjoin Virginia apple growers from violating federal laws protecting the job opportunities of these workers. The ruling of the Court of Appeals reversing the dismissal of Puerto Rico's second amended complaint should be affirmed.

Respectfully submitted,

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Dated: February 11, 1982

Thomas R. Kiley
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AFFIDAVIT OF SERVICE

I, Anthony P. Sager, Assistant Attorney General of the Commonwealth of Massachusetts, depose and say that on February 12, 1982, I served three copies of the foregoing Brief of Amicus Curiae Commonwealth of Massachusetts on petitioners and respondent by depositing same in the United States post office at Post Office Square, Boston, Massachusetts, with first class postage pre-paid, addressed to their respective counsel of record: Thomas J. Bacas, Esq., and S. Steven Karalekas, Esq., 1250 Connecticut Ave., N.W., Washington, D.C. 20036; Paul A. Lenzini, Esq., Chapman, Duff, and Paul, 1730 Pennsylvania Ave., N.W., Washington, D.C. 20006.

Anthony P. Sager

Anthony P. Sager

Subscribed and sworn to before me at Boston, this 12th day of February, 1982.

Celia C. DeAngelis

Notary Public

My commission expires: 11/14/86